

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 98-227

April 7, 1998

PUBLIC UTILITIES COMMISSION
Inquiry on Procedures and
Standards for the Sale of Rights to
Energy and Capacity and the
Granting of Extensions for
Generation Asset Divestiture

NOTICE OF INQUIRY

WELCH, Chairman; NUGENT and HUNT, Commissioners

I. SUMMARY

In this Notice we initiate an inquiry on the appropriate procedures, requirements and standards for the sale of rights to energy and capacity held by an investor-owned transmission and distribution (T&D) utility after March 1, 2000, and for the granting of extensions to permit utilities to divest one or more generation assets after March 1, 2000.

II. BACKGROUND

L.D. 1804, "An Act to Restructure the State's Electric Industry," (the Act)¹ directs the Commission to adopt rules requiring each investor-owned electric utility in Maine to sell any rights it holds to capacity and energy from generation assets and purchased power contracts that are not divested pursuant to the Act. 35-A M.R.S.A. § 3204(4). In addition, the Act requires the Commission to adopt rules for granting extensions to the statutorily-set divestiture date of March 1, 2000, thereby allowing investor-owned utilities to delay divestiture of assets beyond that date. 35-A M.R.S.A. § 3204(3). A copy of Section 3204 is attached to this Notice as Attachment 1.

By the provisions of the Act, the Legislature recognized the importance of separating the ownership and control of electric generation from transmission and distribution businesses in promoting a viable competitive market for energy and capacity. The Act requires complete divestiture of most utility-owned generation assets and businesses, and certain purchased power contracts, by March 1, 2000. However, the Legislature also specified certain types of assets and contracts for which it would not require outright divestiture. These include qualifying facility (QF) and demand-side management (DSM) contracts; nuclear plants; and generation assets located outside the United States.

¹ The Act is codified as Chapter 32 of Title 35-A (35-A M.R.S.A. §§ 3201-3207).

For these assets and contracts, T&D utilities will retain ownership or contractual interests and obligations, but will "divest" their entitlement to any energy or capacity the asset or contract provides on or after March 1, 2000. The Act allows exceptions to this requirement if the Commission finds that a T&D utility needs certain energy and/or capacity to operate efficiently.

The Legislature also recognized that it could be in the public interest to delay the sale of one or more assets until after March 1, 2000. Section 3204(3) of the Act gives the Commission authority to permit such a delay upon application by an investor-owned utility and a finding that the delay would be likely to improve the sale value of the asset.

The purpose of this Inquiry is to gather the information necessary to establish rules for: (1) the sale of entitlements to capacity and energy from assets or contracts not divested; and (2) granting extensions to the divestiture requirements of section 3204(1). We seek comment on specific administrative issues, such as appropriate filing and procedural requirements, as well as on substantive issues, such as the timing and structure of the sale process. We encourage comment generally on extent to which these rules should prescribe the sale and extension processes, as opposed to simply establishing administrative requirements by which T&D utilities submit proposals and receive necessary approvals.

III. ISSUES FOR COMMENT

We pose several questions below. We ask interested persons to respond to these questions, and to comment on other relevant matters not covered by these questions.

A. Sale of Rights to Energy and Capacity. 35-A M.R.S.A. § 3204(4)

Section 3204(4) of the Act directs the Commission to establish rules requiring each investor-owned utility to sell its entitlement, or right, to energy and capacity from any generation asset or contract held after March 1, 2000. The Act also instructs the Commission to establish procedures to promote the maximum value of capacity and energy sold. The following questions relate to these rules.

1. How prescriptive should the rule be? For instance, should the rule specify the timing and structure (e.g. bid process) of these sales, or should it simply establish administrative requirements that each utility propose a plan subject to Commission approval?

2. Assuming the rules established administrative requirements only, please propose appropriate filing requirements and administrative procedures necessary to ensure the sales are designed to obtain maximum values.

3. Assuming the rule set forth timing and/or structure requirements:

a) Should the rule specify what type of bid or auction process each T&D utility must use? If so, please comment on what the rule should require (e.g. a single round of sealed bids, a simultaneous ascending auction, a Vickery auction, a Dutch auction, or some combination of these or other processes);

b) Should the rule specify the duration and frequency of the sales? At this point, we view a one-time sale of a T&D utility's entire portfolio of entitlements through their terms as having significant market price risk, and would prefer sales to be of shorter duration with periodic re-bids. Please comment on this as a general approach. Please also comment on how frequently any re-bids should occur to capture maximum value, while also limiting the market risk.

c) Should the entire portfolio held by a T&D utility be sold on the same schedule, or should sales be staggered -- for example, a third of the portfolio sold each year? Please explain the basis for your recommendation, taking into account associated transaction costs;

d) What other structure or timing aspects of the sale should the rule address?

4. By what dates should the first bid process:
(1) begin; (2) be completed?

a) Please comment on the relevance of the timing of the first bid process to standard offer service. For example, is the capacity and energy sold pursuant to 3204(4) likely to be a source of supply for standard offer providers?

b) Please comment on how the timing of the first bid process impacts the setting of stranded cost charges for rates effective March 1, 2000. How far in advance of March 1 must the bid be completed if its results are to be used in setting these rates? What are the disadvantages of completing the bid much in advance of March 1?

5. In prior cases the Commission has expressed concern that divestiture pursuant to the Act not result in

markets wherein one or more participant has an unacceptably high share of the relevant supply. If the Commission found that under certain scenarios these sales would result in market power, what rules (if any) should it establish to avoid such an outcome? For example, should multiple buyers be required?

6. Chapter 360 of the Commission's rules (as recently amended) provides that short-term energy rates and avoided energy and capacity costs be set with reference to capacity and energy sales pursuant to section 3204(4). See Attachment 2 to this Notice. Because of Chapter 360's reliance on prices received pursuant to these sales, it seems that the sale prices must be (1) separately provided for capacity and energy; (2) provided by month; and (3) time-differentiated as specified by Chapter 360. Please comment. Are any other provisions necessary to accommodate Chapter 360 in this regard? Are these provisions of Chapter 360 likely to constrain the capacity and energy sales such that maximum values would not be realized? If so, please describe how.

7. The Act allows an exemption for an investor-owned T&D utility to retain the rights to any capacity and energy the Commission determines to be necessary for it to perform efficiently. In what procedural context should the Commission consider any such exemption from section 3204(4)? Should the Commission simply react to exemption requests from utilities?

8. The Act allows an investor-owned utility to retain rights to capacity and energy only if the Commission finds those rights "are necessary for the utility to perform its obligations as a transmission and distribution utility in an efficient manner." Should these rules establish criteria for this exception or should the Commission evaluate specific rights to capacity and energy on a case-by-case basis? If the former, please propose a set of criteria.

9. For CMP, BHE and MPS: Please provide a list of particular sources and estimated amounts of capacity and energy each believes necessary to perform efficiently as a T&D utility, and explain why.

10. Should the electricity needs of the T&D utility itself (e.g. lighting at corporate offices) justify exclusion from sale under section 3204(4)? What are the advantages and disadvantages of allowing the utility to provide its own electric generation service this way?

11. If a T&D utility installed distributed generation as part of a least-cost distribution system plan, would the T&D utility also have to have entitlement to the output of that

generation? Please comment on whether the same purposes could be served if:

a) the T&D utility sold the rights to any capacity and energy produced?

b) the T&D utility sold at wholesale any capacity and energy produced?

12. Potential bidders on the rights to capacity and energy from assets and contracts not divested will likely require information about assets and contracts in the portfolio. It seems reasonable that these rules would specify what information the T&D utilities must provide. Please comment on the types of information likely to be necessary or useful, and the feasibility of providing it. Please also comment on the advantages and disadvantages of providing actual contracts, either in lieu of or in addition to descriptive information about the contract. Finally, please comment on any confidentiality issues implicated by the provision of this information, and propose approaches to deal with any problem the commentor perceives.

13. Because of the importance of these sales to stranded cost recovery levels, it seems preferable to require Commission approval of the sales. Please comment.

14. Please comment on whether the Act would prohibit a T&D utility from selling its rights to capacity and energy from assets/contracts not divested to an affiliated competitive electricity provider. If such a sale was allowed, please comment on what rules or standards should apply to such a transaction.

15. Please comment on whether the FERC will have jurisdiction over sales made pursuant to section 3204(4). Please also comment on any timing issues raised by FERC involvement. Finally, if these sales are FERC-jurisdictional, please comment on whether this Commission's approval is also appropriate.

B. Granting Extensions to Permit Utilities to Divest Generation Assets After March 1, 2000. 35-A M.R.S.A. § 3204(3)

The Act provides that an investor-owned electric utility may ask the Commission for permission to delay divestiture of one or more of its assets until after March 1, 2000. Section 3204(3) directs the Commission to establish by rule, procedures relating to its granting of any such extension. The following questions relate to these rules.

1. It seems preferable to establish by rule only the administrative requirements and processes by which T&D utilities would seek, and the Commission consider, such extensions. The merits of any particular extension could, thus, be considered in context. In contrast, the rules could prescribe the conditions under which extensions would be granted. Please comment. Please also suggest appropriate filing requirements and administrative procedures.

2. The Act directs the Commission to grant an extension if doing so "would be likely to improve the sale value of the assets or the market." Please comment on what factors would inform this finding.

a) Would the fact that a utility received less than a certain number of bids justify an extension?

b) Would the fact that a utility received no bids at or above a certain level (e.g. above book value or comparable to reported sales of similar assets) justify an extension?

c) Would the fact that a utility received only bids with onerous contingencies or conditions justify an extension?

3. The Act does not appear to establish an improvement in market value as the sole criterion justifying an extension. Please comment on this interpretation of the Act. Please also comment on what other factors would justify an extension.

4. Please comment on whether, as a policy matter, the Commission should delay divestiture of one or more generation assets upon a finding that retail markets were not yet sufficiently viable. Would the Act allow a delay for this reason?

5. Section 3204(3) directs that any asset for which an extension is granted be transferred to a corporate entity that is distinct from the T&D utility, and that the conduct of utility and affiliate be governed by section 3205 of the Act, which establishes standards of conduct for T&D utilities and their marketing affiliates. Please comment on the applicability of the section 3205 standards, and identify different or additional standards necessary in this instance. Is a T&D affiliate that owns generation assets after March 1, 2000 permitted to sell electricity to retail customers? Please comment on the Commission's authority to prohibit such an affiliate from making retail sales. If such an affiliate is allowed to sell

electricity to retail customers, should its retail sales be aggregated with the T&D utility's affiliated competitive provider for purposes of the limits in section 3205(2)?

6. Please comment on what processes the Commission would use to make a finding on whether an asset's value would likely improve if its sale was delayed. Under what circumstances (if any) would it be possible to make such a finding without putting the asset up for sale?

7. Please comment on whether there may be circumstances in which the Commission should, on its own motion, consider whether a T&D utility ought to delay divestiture of one or more of its assets, or whether the Commission should only consider the issue in the context of a T&D utility's application for an extension pursuant to section 3204(3). Please also comment on whether the Act would allow the Commission to require a delay on its own motion.

8. Please comment on whether there ought to be limits on the number of assets, or aggregate capacity, for which the Commission can allow divestiture after March 1, 2000. What would the purpose(s) be of any such limits? Please also comment on what specific limits (if any) ought to be established.

9. Please comment on whether there ought to be a date by which any asset(s) held after March 1, 2000 would be divested? What factors would be relevant to establishing the date?

10. There appears to be an inconsistency between the statutory requirement that a T&D utility transfer any asset held past March 1, 2000 to a distinct corporate entity, and the requirement that the utility sell all rights to capacity and energy for assets not divested. Please comment. Should the rules require that the corporate entity then holding the asset sell its entitlement to the output of the asset pursuant to the section 3204(4) procedures?

11. The Act specifically addresses treatment of all generation assets, contracts and related businesses currently held by electric utilities. The Act also prohibits an investor-owned T&D utility from owning, having a financial interest in, or otherwise controlling generation assets after March 1, 2000, except in the limited instances permitted by the Act. Please comment on whether the Act would also prohibit an affiliate of a T&D utility from acquiring generation assets after March 1, 2000 (other than would be allowed pursuant to the Commission's granting of an extension). Please also comment on whether any prohibition would extend to affiliates or assets outside of Maine, New England, or other geographic areas likely

to provide supply for T&D utility's service territory, or outside of the United States.

Interested persons may participate in this inquiry by filing a letter stating their interest in this proceeding no later than April 17, 1998. The letter should be addressed to Dennis L. Keschl, Administrative Director and include the docket number, Docket No. 98-227. The Commission will then issue a service list. All subsequent filings must be served to all interested parties on the service list. Interested persons may file substantive comments by May 1, 1998. We will provisionally adopt rules regarding these issues by March 1, 1999.

Accordingly, we

O R D E R

1. That an Inquiry shall be opened as described in the body of this Notice;
2. That this Notice shall be sent to all electric utilities in the State of Maine;
3. That this Notice shall be sent to the service list of electric restructuring, Docket No. 95-462;
4. That this Notice shall be sent to the service lists of Docket No. 92-345; Docket No. 95-052; Docket No. 97-116; Docket No. 97-886; Docket No. 96-053; Docket 98-099; and
5. That this Notice of Inquiry will also be posted on the Commission's website, <http://www.state.me.us/mpuc>

Dated at Augusta, Maine this 7th day of April, 1998.

BY ORDER OF THE COMMISSION

Dennis L. Keschl
Administrative Director

COMMISSIONERS VOTING FOR: Welch
 Nugent
 Hunt